

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

DirecTV U.S. DirecTV Holdings, LLC and International Association of Machinists and Aerospace Workers, District Lodge 947, AFL-CIO. Case 21-CA-039546

March 31, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND MCFERRAN

On January 25, 2013, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB No. 54. Thereafter, the Respondent and the Charging Party each filed a petition for review in the United States Court of Appeals for the Ninth Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals vacated the Board's Decision and Order and remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions, cross-exceptions, and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth there, as modified in this decision. Accordingly, we affirm the judge's rulings, findings,¹ and conclusions and adopt the judge's recommended Order to the extent and for the reasons stated in the Decision and Order reported at 359 NLRB No. 54, which we incorporate here by reference. The judge's recommended Order, as further modified here, is set forth in full below.²

¹ In adopting the judge's finding that the Respondent violated Sec. 8(a)(1) by promulgating and maintaining an unlawfully overbroad confidentiality rule, we rely on *Hyundai America Shipping Agency*, 357 NLRB No. 80, slip op. at 12 (2011), in addition to *Flex-Frac Logistics, LLC*, 358 NLRB No. 127 (2012), enfd. 746 F.3d 205 (5th Cir. 2014), which was cited by the Board in the now-vacated Decision and Order.

² We shall also modify the judge's recommended Order to conform with our recent decision in *Don Chavs, LLC d/b/a Tortillas Don*

Finally, we find it appropriate to sever and remand one issue to the administrative law judge for further consideration. The judge found that the Respondent's work rule entitled "Use of Company Systems, Equipment, and Resources" is lawful under the Board's decision in *Register Guard*, 351 NLRB 1110 (2007), enfd. in relevant part and remanded sub nom. *Guard Publishing v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009). Subsequent to the judge's decision and the now-vacated Decision and Order, the Board overruled *Register Guard* in *Purple Communications, Inc.*, 361 NLRB No. 126 (2014), and articulated a new analytic framework for determining the lawfulness of an employer's rule restricting employee use of a company's email system. The Board held in *Purple Communications*:

we will presume that employees who have rightful access to their employer's email system in the course of their work have a right to use the email system to engage in Section 7-protected communications on non-working time. An employer may rebut the presumption by demonstrating that special circumstances necessary to maintain production or discipline justify restricting its employees' rights. [*Id.*, slip op. at 14.³]

Accordingly, the allegation concerning the Respondent's rule entitled "Use of Company Systems, Equipment, and Resources" will be severed and remanded to the Chief Administrative Law Judge for assignment to a judge for further proceedings consistent with *Purple Communications*, including allowing the parties to introduce evidence relevant to a determination of the lawfulness of that rule.⁴

ORDER

The National Labor Relations Board orders that the Respondent, DirecTV U.S. DirecTV Holdings, LLC, Riverside, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

Chavas, 361 NLRB No. 10 (2014); to provide for electronic notice posting pursuant to *J. Picini Flooring*, 356 NLRB No. 9 (2010); and to conform to the Board's standard remedial language. We shall substitute new notices to conform to the Order as modified and in accordance with our decision in *Durham School Services*, 360 NLRB No. 85 (2014).

³ The Board explained that its holding in *Purple Communications* is to be applied retroactively, and remanded the case to allow for the introduction of evidence under the new test. *Id.*, slip op. at 16-17.

⁴ Because the Board has been advised that Judge Wacknov has retired from the Agency, the Board requests that the chief administrative law judge designate another administrative law judge in accordance with Sec. 102.36 of the Board's Rules.

(a) Discharging or otherwise discriminating against employees because they supported the Union or engaged in other protected concerted activities.

(b) Promulgating and maintaining a provision in its home services employee handbook entitled "Communications and Representing DirecTV" that contains the following language: "Do not contact the media" and "If law enforcement wants to interview or obtain information regarding a DIRECTV employee, whether in person or by telephone/email, the employee should contact the Security department in El Segundo, Calif., who will handle contact with law enforcement agencies and any needed coordination with DIRECTV departments."

(c) Promulgating and maintaining a provision in its home services employee handbook entitled "Confidentiality" that contains the following language: "Never discuss details about your job, company business or work projects with anyone outside the company . . . never give out information about . . . DIRECTV employees [and] employee records."

(d) Promulgating and maintaining a corporate policy on its intranet system entitled "Public Relations" that contains the following language: "Employees should not contact or comment to any media about the company unless pre-authorized by Public Relations."

(e) Promulgating and maintaining a corporate policy on its intranet system entitled "Employees" that contains the following language: "Employees may not blog, enter chat rooms, post messages on public websites or otherwise disclose company information that is not already disclosed as a public record."

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Gregory Edmonds full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Gregory Edmonds whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the judge's decision.

(c) Compensate Gregory Edmonds for any adverse income tax consequences of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful dis-

charge of Gregory Edmonds, and within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days of the Board's Order, rescind the provision in its home services employee handbook entitled "Communications and Representing DirecTV" that contains the following language: "Do not contact the media" and "If law enforcement wants to interview or obtain information regarding a DIRECTV employee, whether in person or by telephone/email, the employee should contact the Security department in El Segundo, Calif., who will handle contact with law enforcement agencies and any needed coordination with DIRECTV departments."

(g) Within 14 days of the Board's Order, rescind the provision in its home services employee handbook entitled "Confidentiality" that contains the following language: "Never discuss details about your job, company business or work projects with anyone outside the company. . . never give out information about . . . DIRECTV employees [and] employee records."

(i) Within 14 days of the Board's Order, rescind the corporate policy on its intranet system entitled "Public Relations" that contains the following language: "Employees should not contact or comment to any media about the company unless pre-authorized by Public Relations."

(j) Within 14 days of the Board's Order, rescind the corporate policy on its intranet system entitled "Employees" that contains the following language: "Employees may not blog, enter chat rooms, post messages on public websites or otherwise disclose company information that is not already disclosed as a public record."

(k) As more fully set out in the Amended Remedy in the Decision and Order reported at 359 NLRB No. 54, furnish all current home services employees with (1) inserts for the current home services employee handbook that advise that the unlawful rules have been rescinded, or (2) the language of lawful rules on adhesive backing that will cover or correct the unlawful rules; or (3) publish and distribute revised handbooks that do not contain the unlawful rules.

(l) Within 14 days after service by the Region, post at its Riverside, California, facility copies of the attached notice marked "Appendix A"; within that same time period post at all its facilities nationwide where its employee handbook applicable to home services employees is in effect copies of the attached notice marked "Appendix B"; and within that same time period post at all its facilities nationwide where its DEN intranet corporate policies are in effect and where its home service employees handbook is not in effect copies of the attached notice marked "Appendix C."⁵ Copies of the notices, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 22, 2010.

(m) Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS ORDERED that the allegation that the Respondent violated Section 8(a)(1) by maintaining the rule entitled "Use of Company Systems, Equipment, and Resources" is hereby severed and remanded to the Chief Administrative Law Judge for assignment to a judge for further appropriate action as set forth above.

IT IS FURTHER ORDERED that the judge shall afford the parties an opportunity to present evidence on the remanded issue and shall prepare a supplemental decision setting forth credibility resolutions, findings of fact, conclusions of law, and a recommended Order. Copies of the supplemental decision shall be served on all parties, after

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

which the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Dated, Washington, D.C. March 31, 2015

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting International Association of Machinists and Aerospace Workers, District Lodge 947, AFL-CIO, or engaging in other protected concerted activities.

WE WILL NOT promulgate and maintain a provision in our home services employee handbook entitled "Communications and Representing DirecTV" that contains the following language: "Do not contact the media" and "If law enforcement wants to interview or obtain information regarding a DIRECTV employee, whether in person or by telephone/email, the employee should contact the Security department in El Segundo, Calif., who will handle contact with law enforcement agencies and any needed coordination with DIRECTV departments."

WE WILL NOT promulgate and maintain a provision in our home services employee handbook entitled "Confidentiality" that contains the following language: "Never

discuss details about your job, company business or work projects with anyone outside the company. . . never give out information about . . . DIRECTV employees [and] employee records.”

WE WILL NOT promulgate and maintain a corporate policy on our intranet system entitled “Public Relations” that contains the following language: “Employees should not contact or comment to any media about the company unless pre-authorized by Public Relations.”

WE WILL NOT promulgate and maintain a corporate policy on our intranet system entitled “Employees” that contains the following language: “Employees may not blog, enter chat rooms, post messages on public websites or otherwise disclose company information that is not already disclosed as a public record.”

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board’s Order, offer Gregory Edmonds full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Gregory Edmonds whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL compensate Gregory Edmonds for any adverse income tax consequences of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board’s Order, remove from our files any reference to the unlawful discharge of Gregory Edmonds, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

WE WILL rescind the provision in our home services employee handbook entitled “Communications and Representing DirecTV” that contains the following language: “Do not contact the media” and “If law enforcement wants to interview or obtain information regarding a DIRECTV employee, whether in person or by telephone/email, the employee should contact the Security department in El Segundo, Calif., who will handle contact with law enforcement agencies and any needed coordination with DIRECTV departments.”

WE WILL rescind the provision in our home services employee handbook entitled “Confidentiality” that contains the following language: “Never discuss details about your job, company business or work projects with anyone outside the company . . . never give out infor-

mation about . . . DIRECTV employees [and] employee records.”

WE WILL rescind the corporate policy on our intranet system entitled “Public Relations” that contains the following language: “Employees should not contact or comment to any media about the company unless pre-authorized by Public Relations.”

WE WILL rescind the corporate policy on our intranet system entitled “Employees” that contains the following language: “Employees may not blog, enter chat rooms, post messages on public websites or otherwise disclose company information that is not already disclosed as a public record.”

WE WILL furnish all of you with (1) inserts for the current edition of the home services employee handbook that advise you that the unlawful provisions above have been rescinded; or (2) the language of lawful provisions on adhesive backing that will cover or correct the unlawful rules; or (3) WE WILL publish and distribute to all of you a revised employee handbook that does not contain the unlawful provisions.

DIRECTV U.S. DIRECTV HOLDINGS, LLC

The Board’s decision can be found at www.nlrb.gov/case/21-CA-039546 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



APPENDIX B NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT promulgate and maintain a provision in our home services employee handbook entitled "Communications and Representing DirecTV" that contains the following language: "Do not contact the media" and "If law enforcement wants to interview or obtain information regarding a DIRECTV employee, whether in person or by telephone/email, the employee should contact the Security department in El Segundo, Calif., who will handle contact with law enforcement agencies and any needed coordination with DIRECTV departments."

WE WILL NOT promulgate and maintain a provision in our home services employee handbook entitled "Confidentiality" that contains the following language: "Never discuss details about your job, company business or work projects with anyone outside the company . . . never give out information about . . . DIRECTV employees [and] employee records."

WE WILL NOT promulgate and maintain a corporate policy on our intranet system entitled "Public Relations" that contains the following language: "Employees should not contact or comment to any media about the company unless pre-authorized by Public Relations."

WE WILL NOT promulgate and maintain a corporate policy on our intranet system entitled "Employees" that contains the following language: "Employees may not blog, enter chat rooms, post messages on public websites or otherwise disclose company information that is not already disclosed as a public record."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the provision in our home services employee handbook entitled "Communications and Representing DirecTV" that contains the following language: "Do not contact the media" and "If law enforcement wants to interview or obtain information regarding a DIRECTV employee, whether in person or by telephone/email, the employee should contact the Security department in El Segundo, Calif., who will handle contact with law enforcement agencies and any needed coordination with DIRECTV departments."

WE WILL rescind the provision in our home services employee handbook entitled "Confidentiality" that contains the following language: "Never discuss details about your job, company business or work projects with anyone outside the company . . . never give out information about . . . DIRECTV employees [and] employee records."

WE WILL rescind the corporate policy on our intranet system entitled "Public Relations" that contains the following language: "Employees should not contact or comment to any media about the company unless pre-authorized by Public Relations."

WE WILL rescind the corporate policy on our intranet system entitled "Employees" that contains the following language: "Employees may not blog, enter chat rooms, post messages on public websites or otherwise disclose company information that is not already disclosed as a public record."

WE WILL furnish all of you with (1) inserts for the current edition of the home services employee handbook that advise you that the unlawful provisions above have been rescinded; or (2) the language of lawful provisions on adhesive backing that will cover or correct the unlawful rules; or (3) WE WILL publish and distribute a revised employee handbook that does not contain the unlawful provisions.

DIRECTV U.S. DIRECTV HOLDINGS, LLC

The Board's decision can be found at www.nlrb.gov/case/21-CA-039546 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



APPENDIX C

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT promulgate and maintain a corporate policy on our intranet system entitled “Public Relations” that contains the following language: “Employees should not contact or comment to any media about the company unless pre-authorized by Public Relations.”

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the corporate policy on our intranet system entitled “Public Relations” that contains the following language: “Employees should not contact or comment to any media about the company unless pre-authorized by Public Relations.”

DIRECTV U.S. DIRECTV HOLDINGS, LLC

The Board’s decision can be found at www.nlrb.gov/case/21-CA-039546 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

